

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation, or amendment to the regulation, is necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

### Specific Facts Showing the Need for Immediate Action

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

In fall of 2003, adult Oriental fruit flies were trapped in the County of San Bernardino. On September 23, 2003, a male Oriental fruit fly was taken from a trap in the Upland area of San Bernardino County. On September 25, 2003, a male Oriental fruit fly was taken from a trap in the Ontario area of San Bernardino County. On October 3 and October 9, 2003, male Oriental fruit flies were taken from traps in the Ontario area of San Bernardino County. On October 16, 2003, male Oriental fruit flies were taken from traps in the Chino and Ontario areas of San Bernardino County. On October 17, 2003, one female and three male Oriental fruit flies were taken from traps in the Ontario area of San Bernardino County. On October 18, 2003 one female and one male Oriental fruit fly were taken from traps in the Ontario area of San Bernardino County. On October 23, 2003, another male Oriental fruit fly was taken from a trap in the Chino area. The detection of numerous adult Oriental fruit flies was indicative of an incipient infestation of Oriental fruit fly in the Ontario area of San Bernardino County.

Oriental fruit fly has been established in Hawaii, since 1946, where it is a major pest of agriculture, particularly on mangoes, avocados and papayas. Maggots have been found in over 125 kinds of fruits and vegetables in Hawaii alone. The introduction of this pest threatens

numerous crops in California, including apples, apricots, avocados, cherries, citrus, figs, nectarines, peaches, pears, plums and tomatoes. It has been estimated that the cost of not eradicating Oriental fruit fly in California would range from \$44 to \$176 million in crop losses, additional pesticide use, and quarantine requirements. Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has been eradicated.

This proposed amendment of Section 3423(b) will remove approximately 137 square miles of the area surrounding the Ontario area of San Bernardino County and a small portion of Los Angeles County (Pomona) from the area under quarantine for Oriental fruit fly. The fly was eradicated from this area on May 21, 2004; therefore, it is no longer necessary to regulate the movement of hosts and possible carriers of the fly from this area. It is necessary to amend this regulation on an emergency basis to remove the quarantine on the Ontario and Pomona areas in order to remove restrictions on the movement of hosts and possible carriers that are unnecessary. If these unnecessary restrictions were continued, it would create an unnecessary burden for the general public and businesses in these areas. Host crops are being or will be harvested in this area soon. Commercially produced host crops, if the restrictions were continued, would have to be treated or would not be allowed movement from the areas. Also if the restrictions were continued, those members of the public who have grown host fruits and vegetables would be required to process the commodities before the fruits and vegetables can be moved or given away or they would have to destroy the host fruits and vegetables. Because this fly is repeatedly introduced into California with several infestations requiring quarantine action, the Department proposes to retain the regulation text and insert the word “reserved” in subsection (b). By this action, the regulation may be simply amended to add a new quarantine area description when a new infestation is detected without continuing restrictions for areas from which the fly has been eradicated.

#### Authority and Reference Citations

Section 3423(b):

Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

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### Informative Digest

Existing law provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.

#### Section 3423. Oriental Fruit Fly Interior Quarantine.

Existing regulations established a portion of San Bernardino (Ontario area) and Los Angeles (Pomona area) counties as the quarantine area for Oriental fruit fly. This amendment will remove the quarantine area for Oriental fruit fly of approximately 137 square miles in the Ontario area of San Bernardino County and Pomona area of Los Angeles County. The effect of the amendment is to remove authority for the State to regulate movement of hosts and possible carriers of Oriental fruit fly within and from these areas, because it is no longer necessary to protect California's agricultural industry since the fly has been eradicated from these areas.

### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because this amendment will remove the portions of San Bernardino and Los Angeles counties that were in the area under quarantine; therefore, enforcement will no longer be necessary. There are no mandated costs associated with the removal of these areas from the regulation.

### Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.